

**CITY OF ALBANY
CITY COUNCIL AGENDA
STAFF REPORT**

Agenda Date: September 4, 2018

Reviewed by: NA

SUBJECT: Renewal of Lease Agreement with Albany Preschool for use of the City building at 850 Masonic Avenue

REPORT BY: Chelle Putzer, Recreation & Community Services Director

SUMMARY

The item before the Council is a renewal of the Special Lease Agreement with the Albany Preschool for the use of the City owned building at 850 Masonic Avenue.

STAFF RECOMMENDATION

That the Council adopt Resolution No. 2018-87, authorizing the City Manager to execute a lease agreement with Albany Preschool for use of the City building at 850 Masonic Avenue.

BACKGROUND/DISCUSSION

The Albany Preschool is a licensed childcare facility and a not for profit organization that has been in operation since 1937. The Preschool operates out of a City owned building located at 850 Masonic Avenue. The Preschool is licensed for 24 children and has two programs including a morning and an afternoon program as well as summer camps.

The current agreement between the City and the Preschool expired on June 30, 2018. This renewal agreement will allow the Albany Preschool to continue its operation for a five-year term beginning July 1, 2018 until June 30, 2023.

FINANCIAL IMPACT

Albany Preschool will pay a monthly fee of \$200 in the first year, \$400 per month in second year and \$600 per month in the third through fifth years of the agreement. In exchange for the low monthly rent, the Preschool pays for all maintenance and improvements to the facility.

The preschool also reimburses the City in the amount of \$750 per month, (\$9,000 per year) for the use of the adjacent property on the southside of 850 Masonic Avenue (the north 25' of Lots 1, 2, 3; Block 6, Regents Park Map #6) that the City leases from the property owner. In addition, the Preschool pays 30% of the utility costs generated from the gas and electric meter shared with the adjacent Albany Senior Center.

The Preschool has property insurance, general liability and workers' compensation insurance for the building and the staff working at the preschool.

Attachments

1. Lease Agreement Albany Preschool
2. Resolution No. 2018-87

SPECIAL USE AGREEMENT
FOR
ALBANY PRESCHOOL
850 MASONIC

THIS AGREEMENT entered into _____ between the CITY OF ALBANY, 1000 San Pablo Avenue, Albany, CA and ALBANY Preschool, (“Lessee”), 850 Masonic Avenue, Albany, CA.

FOR AND IN CONSIDERATION of the mutual terms, covenants and conditions herein, City of Albany grants to Lessee, the license to operate the area described in Exhibit A attached, signed by the parties, and incorporated herein, subject to the following terms and conditions.

1. LOCATION: This license shall be limited to the area (“premises”) at 850 Masonic Avenue, Albany, CA and the playground area on the south side of building.

2. TERM – CANCELLATION: The terms of the license shall commence on **July 01, 2018 and continue until June 30, 2023 with a five (5) year extension by mutual agreement** with the terms and conditions of this agreement, subject to prior cancellation by the City of Albany upon at least one (1) year notice to Lessee given if Lessee has become unwilling or unable to operate on the premises in accordance with the requirements of the City of Albany.

Should Lessee hold over after the expiration of the term with the express or implied consent of the City of Albany, such holding over shall be deemed to be a tenancy from month-to-month subject to all of the terms and conditions of this agreement.

Upon expiration or termination of the term, Lessee shall remove from the premises or otherwise dispose of in a manner satisfactory to City, all personal property belonging to Lessee located on the premises. Should Lessee fail to remove or dispose of Lessee’s property as herein provided, City may, in its election, consider such property abandoned and may dispose of same at Lessee’s expense. Also, at the expiration or termination of the term Lessee shall quit and surrender the said premises, including real property improvements, in a good state of repair, reasonable wear and tear excepted, damage by matters over which Lessee has no control excepted, provided that such exculpatory provision shall not extend to any risk which Lessee is required to insure against as herein provided.

3. RENT: The monthly rent shall be Year 1: \$200, Year 2: \$400, Year 3-5: \$600, in addition to the in-kind services provided by Lessee (the parents of the Preschool enrollees) for maintenance and upkeep. In addition, Lessee will reimburse the City of Albany \$750 per month for lease of adjacent property on the southside of 850 Masonic Avenue “Exhibit B” described as the “the north twenty-five (25) feet of Lots 1, 2, 3; Block 6, Regents Park Map #6”. Lessee will be billed quarterly for rent payments. The Lessee agrees to reimburse the City of Albany for any

future increase(s) in the monthly rental of adjacent property throughout the term of this agreement. The Lessee will be notified in writing of any increase in rental fee within 30 days of the City's notification of any increase. The City does not guarantee that the adjacent property will continue to be available to Lessee through the term of this agreement should the property owner discontinue renting the property.

4. PURPOSE – DAYS AND HOURS: The subject premises shall be used only by the Lessee for the purposes described in item 3 of "Exhibit "A".

Lessee expressly agrees at all times during the terms of this agreement, at its own cost and expense, to operate the premises in a clean, safe, wholesome and sanitary condition free of trash, garbage or obstructions of any kind and conduct its operation in compliance with any and all present and future laws, general rules or regulations of any governmental authority now or at any time during the term of this agreement in force relating to sanitation or public health, safety or welfare; and lessee shall at all times faithfully obey and comply with all laws, rules and regulations applicable thereto, adopted by Federal, State or other governmental bodies or departments of officers thereof, and this agreement is expressly subject to present and future regulations and policies of the City of Albany. Lessee shall remedy without any delay any defective, dangerous or unsanitary conditions.

No goods, merchandise or materials, which are in any way explosive or hazardous, shall be kept, stored or sold in or on said premises. No offensive or dangerous trade, business or occupation shall be carried on therein or thereon.

5. UTILITIES – TAXES:

(a) Utilities. Lessee shall pay 30% of the total PG&E bill received by the Senior Center, to be billed quarterly.

6. CONDITION OF PREMISES: The taking of possession of the premises by the Lessee shall, in itself, constitute acknowledgement that the subject premises in their presently existing condition, "as is", and that the City shall not be obligated to make any alterations, additions, improvements, or repairs thereto, except as may be expressly provided herein.

7. ALTERATIONS/IMPROVEMENTS: At any time during the term hereof, Lessee shall have the right, subject to prior written approval by City as hereinafter provided, to construct alterations, additions and/or improvements ("alterations") to the premises, at the Lessee's sole cost and expense and without reimbursement from the City of Albany.

Whenever Lessee desires to construct alterations, it shall prepare specifications and working drawings therefore and submit same to City for approval, which approval City shall not unreasonable withhold, provided that the proposed work will be of high quality, compatible with the purposes described in item 3 of Exhibit "A", and compatible in finish, color and design with the existing structures on the premises and the school environment.

Upon expiration or termination of this agreement, any alterations to the premises or to any structures located thereon, including fixtures, shall remain on the premises and be surrendered to and become the property of the City of Albany.

8. SERVICES CITY OF ALBANY SHALL PROVIDE: The City shall provide no services or other in-kind benefits except as expressly set forth herein.

9. FACILITIES LESSEE SHALL PROVIDE: Lessee shall furnish and keep available all equipment and items necessary to properly operate the facility for its purposes, and care for and maintain Lessee's facilities and equipment thereof.

10. MAINTENANCE OF FACILITIES: Lessee agrees to maintain any and all of the facilities, improvements and equipment on the premises in good order and repair, at Lessee's cost and expense, during the entire term. Should Lessee fail, neglect or refuse to do so, the City shall have the right, but not an affirmative obligation, to perform such maintenance or repairs for the Lessee's account and the Lessee agrees to promptly reimburse the City for the cost thereof, provided, however, that the City shall first give Lessee ten (10) days' written notice of its intention to perform such maintenance or repairs for the Lessee's account for the purpose of enabling Lessee to proceed with such maintenance or repairs at its own expense. City shall not be obligated to make any repairs at its own expense. City shall not be obligated to make any repairs to or maintain any improvements on the subject premises. Lessee hereby expressly waives the right to make repairs at the expense of the City and the benefits of the provisions of Sections 1941 and 1942 of the Civil Code of the State of California, if applicable.

11. QUALITY OF SERVICE AND CONTROL OF RATES AND CHARGE: Lessee agrees that it will maintain a high standard of service at least equal to that of similar facilities in the San Francisco East Bay region.

12. PARK INSPECTION AND MAINTENANCE: The City reserves the right to ingress and egress to inspect the premises as deemed necessary by City.

13. INDEMNIFICATION: Lessee hereby waives all claims and recourse against the City including the right to contribution for loss or damage by reason of death or injury to persons or damages to property, whether the person or property of Lessee, its agents or employees, or third persons arising from, growing out of or in any way connected with or incident to this agreement except claims from the sole active negligence of City, its officers, agents or employees. Lessee's liability pursuant to this indemnification agreement shall not exceed sums equal to those set forth in paragraph 14(b) below being the amounts of insurance Lessee is required to carry hereunder.

14. INSURANCE: Lessee shall procure and keep in force during the term hereof, at Lessee's own cost and expense, the following required policies on insurance with companies doing business in California and which are acceptable to City, naming the City of Albany as an additional insured where possible.

(a) Worker's Compensation Insurance as required by the laws of California (if employees are to be hired).

(b) Comprehensive general liability to all operations (including the use of owned and non-owned motor vehicles, contractual liability insuring the indemnify provisions of this agreement, and Products Liability), providing Bodily Injury and Property Damage Liability protection in the amount of \$1,000,000 per occurrence. The Lessee shall be specified as the insured. The Certificate shall name the City of Albany as an "additional insured". Such insurance shall be endorsed to provide that as respect coverage afforded on behalf of the City, such coverage shall be primary insurance and any other insurance available to City under any other policies shall be excess over the insurance required hereby.

(c) Property insurance providing against loss or damage by fire and such other risks, included in an extended coverage endorsement, including vandalism and malicious mischief in an amount of not less than one hundred percent (100%) of the full replacement value of the premises.

15. ASSIGNMENT AND SUBLETTING: Lessee shall neither assign, sublease, or otherwise convey any interest in this agreement or arising hereunder to any persons, entity or entities whatsoever without the prior written consent of City, and any attempt to assign or sublet without such prior written consent shall be void. Consent to any such single assignment or subletting shall not constitute consent to any further assignment or subletting. The Lessee's interest hereunder shall not be assignable in bankruptcy, nor shall said interest be assignable by operation of law. Any document by which any such interest hereunder is conveyed with such consent shall provide that the person acquiring such interest acknowledges familiarity with the terms of the agreement and any Master Agreement and takes his interest subject to the terms and conditions hereof and recognizes that upon expiration or termination of this agreement, City at its sole option may elect to treat any assignee, subtenant or holder of an interest conveyed by Lessee as City's tenant.

16. GOOD FAITH: The parties hereto agree to deal in good faith in all aspects of this agreement.

17. MODIFICATION OF AGREEMENT: Notwithstanding any of the provisions of this agreement, the parties may hereafter, by mutual consent, agree modifications thereof or additions thereto in writing, which are not forbidden by law. City shall have the right to grant reasonable extensions of time to Lessee for any purpose or for the performance of any obligation of Lessee hereunder.

18. NONDISCRIMINATION: The Lessee and Lessee's members shall not discriminate because of gender, race, religion, color or national origin, against any person by refusing to furnish such person any accommodation, facility, service or privilege. Nor shall the Lessee or Lessee's employees or members publicize the accommodations, facilities, services or privileges in any manner that would directly or inferentially reflect upon or question the

acceptability of the patronage of any person because of gender, race, religion, color, sexual orientation or national origin.

In the performance of this contract, the Lessee will not discriminate against any applicant because of gender, race, color, sexual orientation, religion, ancestry or national origin. Lessee will take affirmative action to ensure that members are recruited and treated without regard to their gender, race, color, sexual orientation, religion, ancestry or national origin.

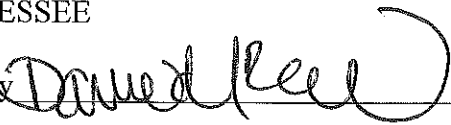
19. NOTICES: Any notices required or permitted to be given under this agreement shall be by certified mail and addressed to respective parties at their addresses indicated on the first page hereof. Such notices shall include any proposed City Council discussion regarding budget hearings, or any other action whatsoever affecting Albany Preschool. Lessee will be notified at least 72 hours prior to the scheduled discussion, hearing or action.

20. MISCELLANEOUS: Headings are for convenience only and shall not be considered in the interpretation of this agreement. This agreement shall benefit and bind the successors and assigns of the respective parties hereto. Should either party bring any legal action or other proceeding for the breach of any term, covenant or conditions of this agreement, the courts shall award reasonable attorney's fees to one of the parties herein based upon the degree to which such party prevailed in such action or proceeding.

IN WITNESS WHEREOF, the parties here have affixed their signature the day hereinabove written.

LESSEE

By


Albany Business License #1006
Expires 12/31/2018

CITY OF ALBANY

By

Nicole Almaguer, City Manager

Approved as to form and content:

Craig Labadie, City Attorney

Business License #: _____

Expiration Date: _____

EXHIBIT A

TO THAT CERTAIN PROPERTY USE AGREEMENT
DATED JULY 01, 2018
BETWEEN
CITY OF ALBANY
AND
ALBANY PRESCHOOL ("LESSEE")

1. LOCATION OF PREMISES: The premises are located at 850 Masonic Ave. Albany, CA 94706.
2. TERM: Period of five (5) years, commencing July 01, 2018 and ending **June 30, 2023 with a five (5) year extension by mutual agreement.**
3. PURPOSE CLAUSE: For the operation of a non-profit cooperative community play center for pre-school age children during the school year observed by the Albany Unified School District and also for the operation of an 8-week summer school session.
4. Uses shall be limited to the specific uses described above and shall not include other uses without first obtaining written permission from the City of Albany Recreation and Community Services Director.

LESSEE

By



CITY OF ALBANY

By

Nicole Almaguer, City Manager

EXHIBIT B

TO THAT CERTAIN PROPERTY USE AGREEMENT
DATED JULY 01, 2018
BETWEEN
CITY OF ALBANY
AND
ALBANY PRESCHOOL (“LESSEE”)

ADJACENT PROPERTY LEASE MAP AND DESCRIPTION:

Lessee will reimburse the City of Albany \$750 per month for lease of adjacent property on the southside of 850 Masonic Avenue described as: “the north twenty-five (25) feet of Lots 1, 2, 3; Block 6, Regents Park Map #6”.

Lessee will be billed quarterly for rent payments. The Lessee agrees to reimburse the City of Albany for any future increase(s) in the monthly rental of adjacent property throughout the term of this agreement. The Lessee will be notified in writing of any increase in rental fee within 30 days of the City’s notification of any increase. The City does not guarantee that the adjacent property will continue to be available to Lessee through the term of this agreement should the property owner discontinue renting the property.

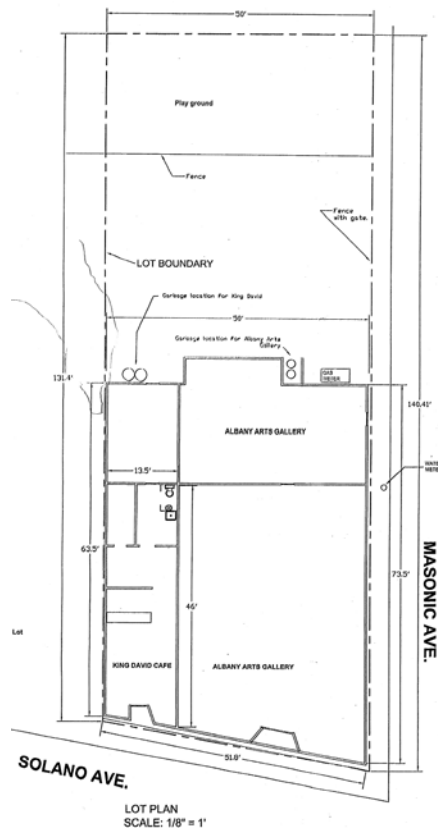
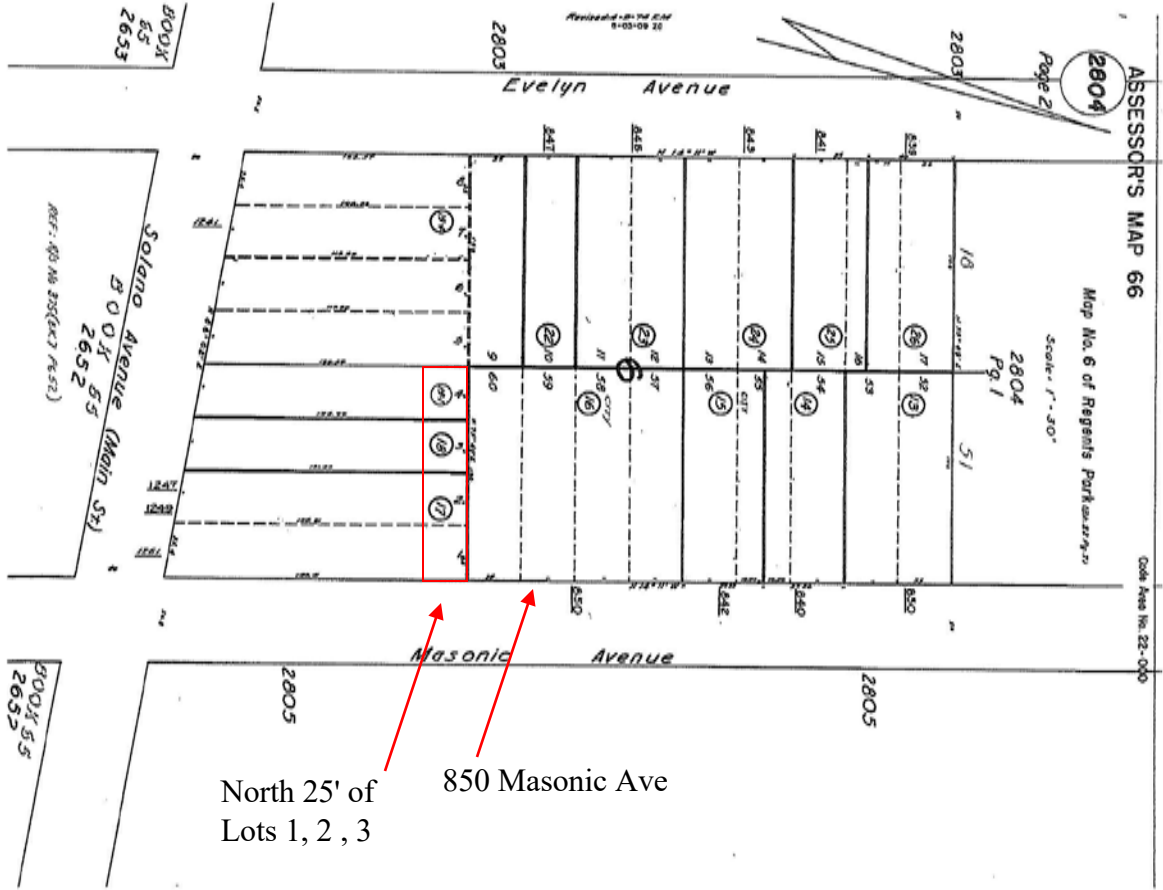


Exhibit B: Parcel Map



For Assessment Use Only



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
08/23/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Phone: (510) 233-2600 Fax: (510) 235-3522 NEK INSURANCE, INC. PO BOX 809 EL CERRITO CA 94530	CONTACT NAME: NEK INSURANCE, INC. PHONE (A/C, No, Ext): (510) 233-2600 FAX (A/C, No): (510) 235-3522 E-MAIL ADDRESS: _____ <hr/> <div style="display: flex; justify-content: space-between;"> INSURER(S) AFFORDING COVERAGE NAIC # </div> INSURER A : INDEMNITY INS. CO. OF NORTH AMERICA INSURER B : _____ INSURER C : _____ INSURER D : _____ INSURER E : _____ INSURER F : _____
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COVERAGES
CERTIFICATE NUMBER: 70736
REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADD'L INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR			D2422188A	10/17/18	10/17/19	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED. EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 _____ \$ _____ _____ \$ _____
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS			D2422188A	10/17/18	10/17/19	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ _____ BODILY INJURY (Per accident) \$ _____ PROPERTY DAMAGE (per accident) \$ _____ _____ \$ _____
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED _____ RETENTION \$ _____						EACH OCCURRENCE \$ _____ AGGREGATE \$ _____ _____ \$ _____
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y / N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						WC STATUTORY LIMITS OTH ER \$ _____ E L EACH ACCIDENT \$ _____ E L DISEASE-EA EMPLOYEE \$ _____ E L DISEASE-POLICY LIMIT \$ _____

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

CERTIFICATE HOLDER IS AN ADDITIONAL INSURED PER FORM CG2011-ADDITIONAL INSURED, MANAGERS OR LESSORS OF PREMISES, WITH RESPECT TO 850 MASONIC AVE, ALBANY, CA.

CERTIFICATE HOLDER

CANCELLATION

CITY OF ALBANY
DEPARTMENT OF PARKS & RECREATION
1000 SAN PABLO AVENUE
ALBANY, CA 94706

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Attention:

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – MANAGERS OR LESSORS OF PREMISES

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Designation Of Premises (Part Leased To You): 850 MASONIC AVENUE, ALBANY, CA 94706	
Name Of Person(s) Or Organization(s) (Additional Insured): CITY OF ALBANY DEPARTMENT OF PARKS & RECREATION 1000 SAN PABLO AVE ALBANY, CA 94706	
Additional Premium:	Incl.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you and shown in the Schedule and subject to the following additional exclusions:

This insurance does not apply to:

1. Any "occurrence" which takes place after you cease to be a tenant in that premises.
2. Structural alterations, new construction or demolition operations performed by or on behalf of the person(s) or organization(s) shown in the Schedule.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and

2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.